



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

R75-689

BRUCE E. BABBITT  
ATTORNEY GENERAL

76-39

February 4, 1976

W. A. Ordway  
Director  
Arizona Department of Transportation  
206 South 17th Avenue  
Phoenix, Arizona 85007

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**ARIZONA ATTORNEY GENERAL**

Dear Mr. Ordway:

In your letter of October 29, 1975, you requested my opinion as follows:

By reason of the nature of damages claimed in the Liquid Asphalt anti-trust suit and the revenue sources which bore the burden of the excess charges (highway user funds), should the State's proportionate share of the judgment be placed in the General Fund or the State Highway Fund after appropriate deductions are made under Section 41-191.01?

Since the Highway Fund created by Ariz. Rev. Stat. Ann. § 28-1821 is a "special fund" within the meaning of Ariz. Rev. Stat. Ann. § 41-191.01, Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 449 P.2d 509 (1969); Switzer v. City of Phoenix, 86 Ariz. 121, 341 P.2d 427 (1959), the damages recovered in In re Western Liquid Asphalt Cases would normally be paid to the Highway Fund. Certain situations have been recognized, however, where limited diversions from special funds have been approved. See, e.g., Att'y Gen. Op. 71-37. Here, the Legislature has made a limited and conditional allocation of \$162,000 of the Western Liquid Asphalt proceeds to the Arizona Drug Control District, H.B. 2421, Laws 1975, Ch. 162, § 2, and this legislative action falls within the limited exceptions which have been recognized.

Accordingly, the first \$162,000 of the Asphalt settlement is to be paid to the General Fund for the use of the Arizona Drug Control District. The remainder of the \$1,062,726.56 Asphalt settlement left after the deductions required by section 41-191.01 and all future recoveries in this lawsuit will be paid over to the Highway Fund.



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Trusting that this satisfactorily answers your request, I  
remain

Very truly yours,

*Bruce E. Babbitt*  
BRUCE E. BABBITT  
The Attorney General

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